

US application number 10/528,513

## RESPONSE TO RESTRICTION REQUIREMENT

Examiner Angela J. Martin has imposed a Restriction Requirement dated April 11, 2007.

This application is the national stage of international patent application number PCT/US04/01553 which was already searched and examined by Examiner Angela J. Martin.

It is noted that the undersigned paid a \$1000 search fee to the USPTO serving as the International Searching Authority in this international patent application. Examiner Martin searched all of claims 1-15, and reported the results of the searching in an International Search Report dated November 8, 2004, a copy of which is attached for convenient reference.

Examiner Martin then examined all fifteen claims, and communicated the results of that examination in a Written Opinion dated November 8, 2004, a copy of which is attached for convenient reference. All fifteen claims were found by Examiner Martin to possess novelty, inventive step, and industrial applicability.

The undersigned also paid a \$365 examination fee to the USPTO serving as the International Preliminary Examining Authority in this international patent application. Examiner Martin examined all of claims 1-15 *a second time* pursuant to this examination fee. Examiner Martin communicated the results of this further Examination in an International Preliminary Examination Report on February 17, 2005. Examiner Martin again found all fifteen claims to possess novelty, inventive step, and industrial applicability.

Immediately thereafter, on March 18, 2005, the undersigned entered the national stage. USPTO was required pursuant to 37 CFR section 1.496 to examine the application “out of order”.

It is noted that in the International Search, Examiner Martin did not find a lack of unity of invention. Instead, all fifteen claims were searched.

It is also noted that in the International Preliminary Examination, Examiner Martin likewise did not

find a lack of unity of invention. Instead, all fifteen claims were examined (and all fifteen claims were found to be patentable).

Despite the requirement of 37 CFR section 1.496, the USPTO failed to examine the application “out of order” and instead took no action at all on the application for more than two years. Only now, on April 11, 2007, has the application been examined at all, and then only to attempt to impose a Restriction Requirement.

The Examiner now attempts to force the undersigned to give up either claims 1-10 or claims 11-15. It is simply unreasonable to impose a Restriction Requirement at the present time.

It cannot possibly impose a greater searching burden to search all fifteen claims as compared with searching only claims 1-10 or claims 11-15, for the simple reason that Examiner Martin has already searched all fifteen claims. The International Search Report, for which the undersigned paid \$1000, is attached.

It likewise cannot possibly impose a greater examination burden to examine all fifteen claims as compared with examining only claims 1-10 or claims 11-15, for the simple reason that Examiner Martin has already examined all fifteen claims. The International Preliminary Examination Report, for which the undersigned paid \$365, is attached. All fifteen claims have already been found to be novel and unobvious (to possess an inventive step).

It is also quite unreasonable to try to force the applicant to file a divisional application directed to such claims as would be given up in this application. Such a divisional application would not enjoy the benefit of “out of order” examination if contained in such a divisional application (because 37 CFR section 1.496 would not apply). Yet the applicant is entitled at the present time to “out of order” examination of all fifteen claims.

Furthermore, forcing the applicant to file a divisional application would impose upon the applicant the great financial burden of paying a duplicate application fee (\$75 to \$300), a duplicate search fee (\$250 to \$500), a duplicate examination fee (\$100 to \$200), a duplicate issue fee (\$700 to \$1400), a duplicate publication fee (\$300), a duplicate first maintenance fee (\$450 to \$900), a duplicate second maintenance fee (\$1150 to \$2300), and a duplicate third maintenance fee (\$1900 to \$3800). The

burden of duplicate government fees by this action of the Examiner would be at the very least \$4925 and as much as \$10000.

It is respectfully requested that the Restriction Requirement be withdrawn, and that the claims, which have already been searched and found patentable by this same Examiner, be allowed.

The applicant hereby elects Group I, with traverse for all the reasons stated above. The Examiner says that claims 1-10 are encompassed by the Group I, and so the applicant identifies the claims 1-10 that the Examiner has identified. This election is made only under protest, and the undersigned reiterates the request that the Examiner, who has already searched and examined all fifteen claims and has found all fifteen claims patentable, simply allow all fifteen claims.

Respectfully submitted,

/s/

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